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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 150630567-7360-02]**

**RIN 0648-BF26**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Groundfish Fishery; Amendment 18**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements Amendment 18 to the Northeast Multispecies Fishery Management Plan. The New England Fishery Management Council developed Amendment 18 to promote fleet diversity and in the groundfish fishery, prevent the acquisition of excessive shares of permits, and enhance sector management. This action limits the number of permits and annual groundfish allocation that an entity can hold. This action also removes several effort restrictions to increase operational flexibility for fishermen on limited access handgear vessels.

**DATES:** This rule is effective [*insert date 30 days after publication in the Federal Register*], except for the amendments to §§ 648.82(b) and 648.87(c), which will be effective on May 1, 2017.

**ADDRESSES:** Copies of Amendment 18, including the Environmental Impact Statement, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis prepared in support of the proposed rule are available from Thomas A. Nies, Executive Director, New England Fishery

Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The supporting documents are also accessible via the Internet at: <http://www.nefmc.org/management-plans/northeast-multispecies> or <http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/multispecies>.

A copy of the record of decision for the Final Environmental Impact Statement can be obtained from the NOAA Fisheries Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Greater Atlantic Regional Fisheries Office (address above) or the Office of Management and Budget by e-mail [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** William Whitmore, Fishery Policy Analyst, phone: 978-281-9182; e-mail: [William.Whitmore@noaa.gov](mailto:William.Whitmore@noaa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

This action approves and implements the management measures in Amendment 18 to the Northeast (NE) Multispecies Fishery Management Plan (FMP). The measures for this action were explained in a notice of availability published on December 6, 2016 (81 FR 87862), and a proposed rule that published on December 20, 2016 (81 FR 92761). NMFS approved Amendment 18 on March 6, 2017.

### **Summary of Approved Measures**

#### *1. Accumulation Limits*

##### Accumulation Limit Guidelines

Amendment 18 includes several general measures detailing how permit accumulation limits are applied.

- Accumulation limits apply to individuals, permit banks, and other entities, including groundfish sectors, at the individual permit and potential sector contribution (PSC) level.
- Accumulation limits do not apply to the amount of annual groundfish allocated to a sector, technically referred to as a sector's annual catch entitlement, or ACE.
- Accumulation limits may be modified in a future framework due to changes from a Federal permit buyback or buyout.
- If an entity held permits or PSC on the control date (April 7, 2011) that exceed the accumulation limits, it is exempt from the accumulation limit, but is restricted to holding no more permits or PSC than it held as of the control date. The grandfathered holdings may be fished or leased by the entity but are not transferrable. Current analyses show that no entity exceeds the control date accumulation limits.
- There is no calculation of partial ownership when considering accumulation limits. Any entity that is a partial owner is assumed to have full-ownership when calculating permit and PSC accumulation limits.

#### Excessive Shares

This action imposes accumulation limits to prevent the acquisition of excessive shares. For Amendment 18 analyses purposes, an excessive share of fishing privileges was interpreted as a share of PSC that would allow an entity to influence the market to its advantage (i.e., exert market power). Based on this analysis, it was determined that no entity currently holds excessive

shares. Also, analysis showed that the accumulation limits and the associated measures established in this action should sufficiently prevent an entity from acquiring an excessive share of fishing permits and exerting market power over the fishery. The limits were also designed, though, to avoid placing adverse impacts on fishing entities that would reduce operational flexibility and market efficiency.

#### Limiting the Number of Permits

This action limits an entity to holding no more than 5 percent of all limited access groundfish permits. An entity is prohibited from acquiring a permit that would result in it exceeding the 5-percent permit cap. As of February 21, 2017, there were 1,335 limited access permits in the fishery; a 5-percent cap would limit an entity to 67 permits. The most permits held by any entity was 50. Based on this information, this permit cap is unlikely to immediately restrict any entity.

#### Limiting the Potential Sector Contribution

This action also limits an entity to holding no more than an aggregated average of all allocated groundfish stocks to 15.5 PSC. With 15 groundfish stocks currently allocated to the fishery, the total PSC across all stocks used by an individual or an entity can be no more than 232.5 (an average PSC of 15.5 percent per stock multiplied by 15 stocks). This allows an entity to hold PSC for a single stock in excess of 15.5 percent, so long as the total holdings used do not exceed 232.5. If the number of allocated groundfish stocks increases or decreases in the future, then this aggregate number (232.5) would increase or decrease by 15.5 per stock. As of February 21, 2017, no entity holds more than 141 PSC. Based on this information, the PSC limit is unlikely to immediately restrict any entity.

Compared to other PSC limits that the Council considered, this option is the least restrictive because there is no stock-specific limit. Further, an entity would be permitted to purchase a vessel permit during a fishing year that would result in exceeding the aggregate 232.5 PSC limit. In this case, the entity must render at least one permit unusable (or “shelve” the permit) so that the entity is not operating above the PSC limit the following fishing year. Any permit that is shelved may not be enrolled in a sector, fished, or leased, but could be sold. An entity is prohibited from purchasing additional permits once it exceeds the PSC limit. This is intended to provide operational flexibility for permit holders while still restricting them to the overall accumulation limit. This measure balances restrictions that are expected to sufficiently prevent excessive shares while avoiding adverse effects on market efficiency and flexibility.

Additional information on these accumulation limits is available in the Amendment 18 environmental impact statement and the proposed rule.

#### Effect of Combined Accumulation Limits

The combination of the PSC limit and 5 percent permit cap raises the difficulty and cost of acquiring enough permits and PSC for any one entity in the groundfish fishery to exert market power over the fishery. Analyses in Amendment 18 conclude that no entity currently has an excessive share of permits. Analyses also show that the maximum allocation an entity could acquire would be around 20 PSC for the majority of stocks, though PSC for certain stocks, such as Georges Bank winter flounder, could be acquired at higher levels than other stocks. Any payoff from obtaining excessive shares would not be realized for many years, if at all. Therefore, the combination of an aggregate PSC limit of 232.5 and a 5-percent permit cap should be sufficient to prevent market power from being exerted.

#### Transfer of Permits by an Individual Entity That Has Exceeded the PSC Limit

We expressed concern in the proposed rule that Amendment 18 does not include permit transfer restrictions on an individual entity that has exceeded the permit accumulation limit. We determined this could potentially create an unintended loophole that would allow transfers to related parties. Such transfers could result in family members controlling permits or PSC in excess of the limits. We argued this was inconsistent with the Council's intent for Amendment 18 to limit an entity's holdings to a level that would prevent exerting market power. We requested public comment on a restriction we proposed that would require permit transfers from an entity with a PSC greater than the PSC limit to be made via an "arm's-length" transaction. For example, an arm's-length transaction would be a permit transfer in the ordinary course of business between independent and unrelated entities, which would result in the owner who exceeded the limit maintaining no interest in or control over the transferred permit and its PSC.

We view this restriction to be consistent with the Council's intent and the goals and objectives for the Amendment. This measure also improves the enforceability of the PSC accumulation limit. As a result, using our authority under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), we are adding regulations to require that a permit transfer for individuals that have exceeded the accumulation limit to be by an arm's-length transaction.

#### Future Changes to Accumulation Limits

Accumulation limits can be modified through a future framework adjustment if a vessel/permit buyback or buyout were enacted in the groundfish fishery. However, any other changes to the accumulation limits would require an amendment to the FMP. We encourage the Council to revisit the accumulation limits established in this Amendment if unanticipated developments adversely affect the goals and objectives of this Amendment. For example, a

substantial reduction in the number of NE multispecies limited access permits (due to permit holders relinquishing their permits) could dramatically reduce the permit cap.

#### Ownership Interest

In order for an accumulation limit to be developed and applied, it is necessary to first define the ownership interest that will be limited. A unique definition of ownership interest as applied to the groundfish fishery is added in section 50 CFR 648.2 of the regulations. To identify ownership interests and account for accumulation limits in the groundfish fishery, a permit holder is required to identify all persons who hold an ownership interest in a particular permit when submitting a groundfish permit application or renewal form for that permit.

#### *2. Handgear A Measures*

To reduce effort controls and increase flexibility for small boat fishermen, this action removes or modifies several management measures affecting limited access permitted handgear vessels (Handgear A vessels).

First, this action removes the March 1-20 spawning-block closure for all Handgear A vessels. Fishing effort by Handgear A vessels is restricted by a very small annual catch limit, and vessels are subject to other spawning closures. This measure makes the regulations for Handgear A vessels more consistent with vessels fishing in sectors, which account for most of the groundfish fishing effort and are already exempt from the 20-day spawning block. This measure is not anticipated to have any substantial biological consequences and will provide additional fishing opportunities for Handgear A vessels.

Handgear A vessels are no longer required to carry a standard fish tote on board. This requirement was initially implemented to aid in the sorting and weighing of fish by both fishermen and enforcement personnel. However, enforcement no longer uses totes

for at-sea weight and volume estimates, so the requirement for vessels to carry a tote is no longer necessary.

Lastly, this action allows a sector to request an exemption from the requirement for Handgear A vessels to use a Vessel Monitoring System (VMS). Handgear A fishermen enrolled in a sector are currently required to utilize a VMS; however, installing and utilizing a VMS system makes enrolling in a sector cost prohibitive for these small vessels. Any sector interested in utilizing this exemption is required to submit an exemption request to us for approval. If a sector exemption were approved, a Handgear A vessel fishing within a sector utilizing the exemption would declare its trips through the interactive voice response call-in system instead of through a VMS. This measure is intended to encourage Handgear A vessels to enroll in a sector by reducing operating expenses. Sectors receive regulatory exemptions and larger allocations that could provide additional flexibility and fishing opportunities to Handgear A vessels.

### **Measures That Can Be Addressed in a Future Framework**

This action allows two measures analyzed in Amendment 18 to be implemented through a future framework action. The Council explored establishing a separate, optional allocation for the Handgear A fishery. Additionally, there was some interest in considering separate management measures for an inshore/offshore Gulf of Maine (GOM) boundary, including separate allocations for inshore and offshore GOM cod. However, because current catch limits for key groundfish stocks, including GOM cod, are so low, further sub-dividing allocations for Handgear A, as well as inshore and offshore GOM cod, were controversial and would be difficult to develop and implement at this time. As a result, the Council elected to potentially consider these measures in a future framework.



In addition, several regulatory clarifications are included at § 648.90 to better delineate the responsibilities of the groundfish plan development team (PDT) as well as which Council management measures could be modified in a future framework.

### **Comments and Responses on Amendment 18 and the Measures Proposed in the Amendment 18 Proposed Rule**

We received 15 comments during the public comment period on the Amendment 18 proposed rule. We specifically requested comments on the Council's proposed measures in Amendment 18 and whether they are consistent with the NE Multispecies FMP, the Magnuson-Stevens Act and its National Standards, and other applicable law. Eight commenters, including the Associated Fisheries of Maine (AFM), Environmental Defense Fund (EDF), Northwest Atlantic Marine Alliance (NAMA), Massachusetts Division of Marine Fisheries (MADMF), Penobscot East Resource Center (PERC), Conservation Law Foundation (CLF), and a few commercial fishermen wrote in general opposition to the measures proposed in Amendment 18. The Northeast Seafood Coalition (NSC) and Gloucester Fishermen's Community Preservation Fund (GFCPF) supported the Amendment. We consolidated responses to similar comments and our responses are below.

#### *Comments on the Amendment 18 Environmental Impact Statement*

*Comment 1:* One commenter suggested including more details on information and opinions expressed by fishing stakeholders during the Amendment 18 public meeting sessions. This commenter also suggested that the pros and cons of sector management and Amendment 18 be linked more clearly.

*Response:* Ample information and documentation was available to the Council, NMFS, and the public during this decision making process. In addition to topical summaries in section

3.4 of Amendment 18, Appendix II has a 30-page summary of the public hearings, including both oral and written comments on the Amendment. Responses to those public comments are included in Appendix III and provide an adequate description of stakeholder concerns. Section 7.6.1.2 of Amendment 18 includes a social impact analysis that reviews the impacts on fishermen and fishing communities. The influence and interactions of sector management with the groundfish fishery and fishing communities were also described in the Compass Lexecon report summarized in the Amendment and the proposed rule. This report is also publically available online at [http://archive.nefmc.org/nemulti/planamen/Amend%2018/compass\\_lexecon/NEMFC%20Report%20Final.pdf](http://archive.nefmc.org/nemulti/planamen/Amend%2018/compass_lexecon/NEMFC%20Report%20Final.pdf).

*Comment 2:* One commenter argued that there is minimal discussion on how the accumulation limits and catch caps will affect the future viability of the fleet, and that more should be included.

*Response:* Analyses of the social and economic impacts of the accumulation limits are included in section 7.6.2 of Amendment 18, as well as the regulatory impact review, in Section 9.11. These analyses include a discussion of both the short and long-term impacts of the alternatives, which are also summarized in Table 1 of the Amendment.

#### *Amendment 18 Goals and Objectives*

*Comment 3:* Many commenters, including those that generally supported and opposed the Amendment, argued that the proposed management measures would not meet the goals and objectives of Amendment 18. The general concern was that consolidation would still occur and that fleet diversity would not be promoted as a result.

*Response:* Management measures in Amendment 18 do address the goals and objectives of the Amendment.

Accumulation limits address goals 1, 3, and 4 of the Amendment by making it unlikely an entity could gain an excessive share of the fishery and exert market power over other fishermen and stakeholders. A detailed discussion of the goals and objectives was provided in the Amendment and the preamble to the proposed rule. The goals and objectives include promoting fleet diversity, upholding a resilient and stable fishery, and preventing any individual or entity from acquiring or controlling an excessive share of the fishery. Amendment 18 acknowledges that it is likely additional consolidation may occur with these accumulation limits in place. However, it is not expected to occur to the extent where an entity could acquire an excessive share and exert market power over other entities. Curbing consolidation helps to maintain diversity even to a limited degree. While other measures considered were more restrictive, the measures adopted by the Council achieve the goals and objectives. As a result, establishing accumulation limits promotes a more diverse and stable groundfish fishery. Comments 5-14 below provide a detailed discussion on the accumulation limits.

Measures modifying and removing limited access handgear fishery restrictions address goals 1, 2, and 3 within the Amendment.

*Comment 4:* Several members of the fishing industry and industry organizations contend that increasing operational flexibility, reducing business expenses such as at-sea monitoring costs, allocating higher and more stable catch limits, reducing input controls, and controlling groundfish catch from other fisheries would be more effective management measures to address the long-term sustainability of the groundfish fleet.

*Response:* The Council's intent for Amendment 18 was to develop accumulation limits for the groundfish fishery to prevent an entity from acquiring an excessive share. This was explained in the *Federal Register* notice that established a control date for such limits (67 FR 19305; April 7, 2011) and announced at public scoping hearings (76 FR 79153; December 21, 2011), as well as in the proposed rule for this action (81 FR 92763; December 20, 2016). As explained in Comment 3, the approved management measures meet the goals and objectives of the Amendment.

The actions suggested by several members of the fishing industry could also promote the Amendment 18 goals objectives and are worth future consideration by the Council.

#### *Accumulation Limits*

*Comment 5:* Several commenters were critical of the excessive-shares report developed by Compass Lexecon.

*Response:* The Council contracted Compass Lexecon to provide an independent review of excessive permit shares in the groundfish fishery. Preliminary results of the analysis were presented to the Council's Groundfish Committee at a number of its meetings so that the Committee and the public could comment. The final report was also peer reviewed, which allowed for additional opportunities for the public to provide input and comment on the analysis. The Council considered the final Compass Lexecon report, the peer review reports, public comments on the analysis, and other analyses conducted in support of the Amendment, when making its decision on Amendment 18 accumulation limit alternatives. The peer reviewer reports can be found here at <https://www.st.nmfs.noaa.gov/science-quality-assurance/cie-peer-reviews/cie-review-2014>.

*Comment 6:* Most opponents, including MADMF, CLF, EDF, NAMA, and PERC, contend that the proposed accumulation limits are too high and will foster further consolidation, which, in turn, reduces fleet diversity. Several commenters expressed concern that some entities could take advantage of low allocations and permit prices to acquire additional permits to exert market power over the fishery. On the other hand, supporters of the Amendment, such as NSC, argue that the higher accumulation limits are necessary to offset constraining quotas, and that a lower accumulation limit would have penalized permit holders for what they had already acquired.

*Response:* Since the approval of Amendment 16 and the expansion of sectors in the groundfish fishery, many industry members and stakeholders have become increasingly concerned about fleet consolidation and the resulting negative impacts on fishing vessels and fishing communities. Amendment 18 was developed to address these concerns.

Some fishing industry members and organizations argued for more restrictive accumulation limits. Several organizations, such as CLF, viewed the establishment of accumulation limits as an opportunity to readjust the allocations from Amendment 16. For example, some suggested stock-specific PSC limits ranging from 2.5 to 10 PSC, and one commenter proposed reducing the permit cap from 5 to 2.5 percent. These limits are much more restrictive than the PSC many entities currently have and could have adversely affected an entity's ability to adapt to changing conditions. Also, limits as restrictive as these could have forced divestiture by reallocating PSC from larger businesses to smaller.

During the development of Amendment 18, annual catch limits for many groundfish stocks were significantly reduced. Since there was less quota affiliated with each permit, some fishermen acquired more permits and PSC to sustain fishing operations and remain viable. Many

entities and organizations argued that more restrictive accumulation limits would have negatively affected many businesses by adversely affecting the market for permits and PSC.

The Council had to balance the need for accumulation limits with the need to provide operational flexibility to the fleet. Understanding that no entity currently holds an excessive share of the fishery, the Council selected the alternative that provides the most operational flexibility to the fleet while substantially reducing the risk of an entity acquiring an excessive share of permits. If conditions or circumstances in the fishery change, the Council can re-visit the accumulation limits established through this action if necessary.

*Comment 7:* Several commenters provided hypothetical mathematical scenarios where entities could acquire large allocations for one or more stocks and potentially have an excessive share of permits. For example, an entity could acquire a PSC of 50 for stock A, a PSC of 30 for stock B, a PSC of 30 for stock C, and small allocations of other stocks and still be under the PSC limit. Critics contend that this would allow an entity to acquire an excessive share.

*Response:* While the accumulation limit measures may mathematically allow an entity to acquire an excessive share of groundfish permits, it is very unlikely this will occur. These “worst case” scenarios were described in a “deterministic analysis” in Amendment 18 (Section 9.11.1.4.1). This analysis examined how much PSC an entity could acquire under the accumulation limits if it were able to purchase the permits with the most PSC for a particular stock. For example, an entity could acquire either 40 PSC of GOM cod or 73 PSC of Georges Bank winter flounder, before reaching an accumulation limit. However, as explained in the Amendment and its supporting analyses, the deterministic analysis is not necessarily a realistic scenario because of the high costs and logistical difficulty of acquiring the specific permits that contain the highest PSC for a specific stock that could allow an entity to exert market power.

Amendment 18 also includes a probabilistic analysis, which is a model designed to predict the likelihood that an individual could strategically acquire permits that have high levels of PSC while remaining under the permit cap. The probabilistic analysis concludes that this would be very difficult. Under the probabilistic analysis, the median accumulation for all stocks was below 20 PSC. The Amendment 18 economic discussion concludes that the probabilistic analysis is much more realistic than the potential PSC limits projected under the deterministic analysis. The review also explains that even without the accumulation limits, acquiring the necessary permits to hold an excessive share would be extremely complex, expensive, and time consuming. This may explain why no entity currently holds an excessive share of permits, despite years without any limitations.

The Compass Lexecon report used by the Council to research excessive shares in the groundfish fishery also found a substantial “competitive fringe” in several groundfish stocks. A competitive fringe is a large group of permit holders who hold a relatively small amount of PSC. If the permit holders in the competitive fringe are efficient, then they are likely to remain in the fishery and help preserve a competitive market structure. In a fishery where there is a competitive fringe, an entity could acquire a high PSC of a given stock yet be unable to exert market power. The Compass Lexecon report concluded that “an excessive-share cap of about 15 percent would be sufficient to ensure low concentration for ACE regardless of the level of the competitive fringe. The large competitive fringe for some species could allow for a higher share cap, should the [Council] choose to recommend separate caps for different species.”

While the Compass Lexecon recommendation was stock-specific, the report did not include a permit cap in addition to the PSC cap. The Amendment 18 analyses conclude that

combining the PSC limit and permit cap should prevent an entity from acquiring an excessive share of permits.

*Comment 8:* Several commenters, including EDF and CLF, argue the Amendment violates National Standards 4 and 8 because the accumulation limits do nothing to prevent consolidation of the fleet and do not manage fishing access consistent with historical activities.

*Response:* We have carefully reviewed the provisions in Amendment 18 and have determined that the Amendment is consistent with both National Standards 4 and 8. Amendment 18 is designed to fairly and equitably prevent the acquisition of excessive shares as the fishery consolidates. No measures in it are designed to prevent the status quo from continuing or an expansion from occurring as stocks recover. By putting in place measures designed to prevent the acquisition of excessive shares while providing for operational flexibility, this action minimizes to the extent practicable the adverse economic effects that could accompany such restrictions on the purchase and sales of groundfish permits, their PSC, and fishing vessels. An explanation of how Amendment 18 meets National Standards 4 and 8 is provided in Section 9.1.1 of Amendment 18.

Amendment 18 suggests that further consolidation is anticipated, even with the accumulation limits, but not to the extent where an entity could acquire an excessive share of the fishery. Consolidation could occur at a greater rate without the accumulation limits established through this action. Importantly, the Amendment 18 analysis concludes that fishing communities would be worse off if the proposed accumulation limits were not implemented because entities would remain unconstrained in their ability to acquire permits and PSC, including potentially acquiring an excessive share of the fishery. We encourage the Council to



continue developing additional management measures that mitigate fleet consolidation and promote fleet diversity.

*Comment 9:* Several commenters, including MADMF, EDF, CLF, and PERC suggested that PSC limits should be species or stock-specific instead of the aggregate PSC limit adopted in this action. Others, like the GFCPF and NSC argued that the PSC limits need to be aggregate because groundfish permits include all groundfish stocks and are not severable.

*Response:* The Council considered these concerns when developing this Amendment. In its report, Compass Lexecon suggested that PSC limits should be stock specific. Four of the six PSC limit alternatives were stock-specific alternatives. However, proponents of an aggregate limit explained that groundfish permits are aggregate permits, with each permit containing a PSC for each allocated stock. A stock-specific PSC limit would restrict the ability for an entity to acquire additional PSC in more than one stock, which is a challenge in a multispecies fishery. Because of this, the Council concluded that the stock-specific limits may be overly restrictive given the current circumstances in the fishery and not necessary at this time. As explained above, the Amendment 18 economic analysis concluded that the aggregate PSC limit, along with the permit cap, should deter an entity from acquiring an excessive share of permits.

*Comment 10:* One commenter suggested that accumulation limits should include limiting a sector's annual catch entitlement (ACE) at the species or stock level.

*Response:* The accumulation limits in this action do not apply to a sector's ACE. Available analyses show that there is no need for an excessive share cap on sector-affiliated ACE because the sectors themselves do not control how member vessels use ACE. Since the implementation of Amendment 16, each sector has reallocated its ACE to its members in a manner consistent with each member's PSC. If a groundfish sector were to modify its operations

in a manner where it began to exercise control over how vessel operators used ACE, it could be worthwhile to consider an ACE limit.

Also, there are no specific regulations that prevent one sector from dividing into multiple sectors. If an ACE limit was adopted and a sector was at risk of reaching that limit, the members could simply break into two separate sectors to avoid the limit, but continue operating collaboratively.

For these reasons, establishing an accumulation limit for sector ACE is not necessary at this time and was not included in Amendment 18.

*Comment 11:* EDF suggested that fishing associations and permit banks should have different PSC caps than individual entities.

*Response:* The Council discussed this idea in detail but was never able to clearly define a permit bank due to the difficulty of identifying and distinguishing different types of owners and permit banks. For example, the difference between an individual or organization that holds multiple permits and a permit bank is not easily defined. Some, such as EDF, argued that non-profits (particularly environmental non-government organizations) should have a higher PSC limit to promote permit banking operations, while opponents were concerned that granting non-profits higher PSC limits could reduce fishermen's access to ACE and reduce fishing opportunities and landings. Due to these complications, the Council elected not to focus on this aspect and selected a single PSC and permit limit for all permit holders.

*Comment 12:* CLF contends that an entity should not be able to exceed the PSC limit and "shelve" a permit. It argues that this measure would allow an entity to choose which permit to shelve so that it could target PSC for a particular species with a higher likelihood of achieving

market power. CLF also suggested that shelving a permit has a similar economic effect on the fishery as fishing it because other fishermen are unable to utilize the shelved PSC.

*Response:* This measure was selected by the Council because it provides fishermen more flexibility when purchasing aggregated multispecies permits, for reasons similar to those explained in Comment 9. The challenge fishermen encounter is that each permit has PSC for all groundfish stocks. A fisherman looking to acquire a specific permit with a higher PSC in a stock they want or need to target may be unable to do so because of PSCs from other stocks on the permit. This measure was designed to give fishermen the flexibility to shift target species or permits while remaining under the PSC limit. To prevent an entity from trying to acquire an excessive share of permits, vessel owners are not able to acquire an additional permit if they have shelved a permit. The PSC affiliated with a “shelved” permit is unusable and is not redistributed to the fishery.

However, we understand some of the concerns expressed by CLF. Although the Council was focused on maintaining flexibility, we recommend that the Council discuss and reconsider the ability for an entity to exceed the PSC limit then “shelve” a permit.

*Comment 13:* One commenter requested that NMFS specifically codify the 5-percent permit cap at 69 permits, which is 5 percent of the approximately 1,373 total limited access NE multispecies permits.

*Response:* This comment is in direct response to our concern expressed in the proposed rule – that an unanticipated dramatic drop in limited access permits (due to permit holders relinquishing their permits) could substantially reduce the permit cap. For example, when Amendment 18 was developed, there were approximately 1,373 limited access groundfish permits, which would result in a 5-percent permit cap of 69 permits. As of February 21, 2017,

there were 1,335 limited access groundfish permits, which sets a permit cap at 67 permits. A more substantial reduction could greatly reduce the permit cap. As we explained in the proposed rule, this issue could be discussed and addressed by the Council in a future action, if necessary. We are not including regulations specifying a specific number of permits for the permit cap because we determined it would not be consistent with the Council's intent to limit the degree of consolidation.

*Comment 14:* Three commenters supported, and two commenters opposed, our suggestion that permit transfers for entities who have exceeded the PSC limit and “shelved” permits should be transferred via an “arm’s-length” transaction. Those commenters in opposition suggested that the measure should first be considered and discussed by the Council.

*Response:* As explained in the preamble above, the arm’s-length transaction requirement closes a loophole to the PSC limit restriction. Without this additional restriction, a loophole could allow an entity to indirectly acquire an excessive share of the fishery through collusion of permit holdings. This measure improves the enforceability of the PSC accumulation limit and ensures that the limit is a real limit, not just a limit on paper. Without the arm’s-length transfer requirement, an entity could undermine the intent of the accumulation limits by transferring a permit to a family member or other entity the transferor controls indirectly. The Council did not provide public comment on this measure; however, we determined that ensuring the limits are effective is consistent with the Council's intent and the goals and objectives of Amendment 18. For these reasons, we are implementing this requirement.

#### *Other Measures*

*Comment 15:* The Northeast Hook Fishermen's Association wrote in support of the Handgear A management measures.

*Response:* We agree that these measures will provide additional operating flexibility for Handgear A vessels and have approved these measures. The Council should continue to consider management measures that will provide increased flexibility and additional fishing opportunities for handgear vessels.

*Comment 16:* Two commenters argued there is a greater need for market transparency in the groundfish fishery and urged the Council and NMFS to make ACE trade data more transparent. They expressed concern that a lack of market and trade information is detrimental to some fishermen who may be undervaluing their allocations or unknowingly overpaying for quota. It was suggested that trade data could be aggregated in a manner so that confidential information is not released.

*Response:* The Council considered an alternative in Amendment 18 to exempt ACE disposition data from confidentiality restrictions. Under this alternative, value associated with the movement of ACE within and between sectors would have been considered non-confidential and made available to the public. Consistent with current data submission timeframes, price data on trades made between sectors would have been made available during the fishing year. Price data on the movement of ACE within sectors would have been made available after the end of the fishing year.

Under the Magnuson-Stevens Act, only data required to be submitted to NMFS for a determination in a limited access program can be released. The Council did not select this alternative as preferred because NMFS determined that ACE price data are not submitted to NMFS for a determination in the sector catch-share program, and, therefore, may not be released under the Magnuson-Stevens Act data confidentiality provisions. Because these data are

confidential per the Magnuson-Stevens Act requirement, neither the Council nor NMFS can release pricing behavior and ACE usage at the level of detail requested.

*Comment 17:* NAMA and PERC suggested that Amendment 18 should have included inshore and offshore management measures for the GOM. These groups requested that a short-term task force be established to develop inshore and offshore fishery management measures.

*Response:* We agree that inshore and offshore management measures are worth further consideration. As explained in Amendment 18 and the proposed rule for this action, the Council considered, but decided not to pursue, development of distinct inshore and offshore fishery management measures for vessels fishing in the GOM. The Council spent considerable time debating these issues and elected to potentially pursue the measures in a future framework adjustment. Requests to establish a short-term task force should be brought to the Council and its Groundfish Oversight Committee.

*Comment 18:* EDF expressed concern that establishing the Redfish Exemption Area would increase misreporting and suggested that any vessel targeting redfish in an exemption area be required to have 100-percent monitoring coverage, or be monitored electronically.

*Response:* The Council chose not adopt the Redfish Exemption Area in Amendment 18. However, groundfish sector vessels have a regulatory exemption from minimum mesh size requirements so they can better target redfish. A proposed rule soliciting public comment on sector operations plans and exemptions for the 2017-2018 fishing years will be published in spring 2017. Comments on the Redfish Exemption Area should be made through that action.

*Comment 19:* Two commenters were critical of how the Council managed the public comment process during the development of Amendment 18, arguing that the Council often disregards fishermen's concerns. One organization wrote in support of the Council process.

*Response:* We disagree that the Council mismanaged the public comment process. The public had ample opportunities to comment on Amendment 18 and its proposed management measures. Amendment 18 was developed over several years during dozens of public meetings. All of the management measures were developed with public comment. The public was able to comment on the scope of the Amendment, review draft and final environmental impact statements, critique the Amendment itself, and respond to proposed regulations. The Council and NMFS followed public comment processes required by the National Environmental Policy Act, the Magnuson-Stevens Act, and the Administrative Procedure Act (APA).

### **Changes from the Proposed Rule**

As explained in the preamble of this rule and in Comment 14 above, using our authority under section 305(d) of the Magnuson-Stevens Act, we added a regulatory measure at 50 CFR 648(a)(1)(i)(N)(4) that requires permit transfers for individuals that exceed the accumulation limit to be made by an arm's-length transaction. The arm's-length requirement was discussed in the preamble of the proposed rule.

The regulatory text proposed at § 648.4(a)(1)(i)(N) was revised to better clarify how the grandfather provision is applied to the accumulation limits implemented through this action.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the management measures implemented in this final rule are necessary for the conservation and management of the NE multispecies fishery and consistent with the Magnuson-Stevens Act, and other applicable law.

The Council prepared, and NMFS filed, a final environmental impact statement (FEIS) for this action with the Environmental Protection Agency (EPA). The EPA published a notice of availability for the FEIS on October 14, 2016 (81 FR 71094).

In approving the Amendment on March 6, 2017, NMFS issued a record of decision (ROD) identifying the selected alternative. A copy of the ROD is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

This final rule does not contain policies with Federalism or “takings” implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

This rule includes two regulatory modifications that will increase the operational flexibility for Handgear A vessels. Because these regulatory changes relieve regulatory restrictions, these measures are not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). Currently, Handgear A vessels are required to carry a standard fish tote on board. Because enforcement no longer use totes for at-sea weight and volume estimates, the requirement for vessels to carry a tote is unnecessary and is being removed. This action also allows a groundfish sector to request an exemption from requiring Handgear A vessels to utilize a vessel monitoring system (VMS). Currently, all sector vessels are required to use a VMS while fishing. Handgear vessels have argued that this requirement is cost prohibitive. If an exemption were requested and approved, Handgear A vessels enrolled in a sector with the exemption would no longer be required to purchase a VMS. This measure increases the feasibility for a Handgear A vessel to enroll in a sector by reducing its operating expenses.



## **Final Regulatory Flexibility Analysis**

Section 604 of the Regulatory Flexibility Act (RFA) requires an agency to prepare a final regulatory flexibility analysis (FRFA) after being required by that section or any other law to publish a general notice of proposed rulemaking and when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code. The FRFA describes the economic impact of this action on small entities. The FRFA includes a summary of significant issues raised by public comments, the analyses contained in Amendment 18 and its accompanying FEIS/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (IRFA), the IRFA summary in the proposed rule, as well as the summary provided below. A statement of the necessity for and objectives of this action are contained in Amendment 18 and in the preamble to this final rule, and is not repeated here. A copy of this analysis is available from the Council (see

**ADDRESSES).**

*A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments*

Our responses to all of the comments received on the proposed rule, including those that raised significant issues with the proposed action, or commented on the economic analyses summarized in the IRFA and below, can be found in the Comments and Responses section of this rule. Comment 2 suggested that additional analyses detailing how permit caps will affect the future viability of the fleet was needed. Comment 5 explained that several commenters were critical of an independent report and analyses utilized by the Council to develop Amendment 18 accumulation limits. Comment 6 summarized that most opponents to the Amendment contend that the accumulation limits will promote additional consolidation and reduced fleet diversity.

Detailed responses are provided to each of these specific comments and are not repeated here.

There were no other comments directly related to the IRFA; the Chief Counsel for the Office of Advocacy of the Small Business Administration (SBA) did not file any comments. No changes to the proposed rule measures were necessary as a result of these public comments.

*Description and Estimate of the Number of Small Entities to Which this Rule Will Apply*

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of \$11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The \$11 million standard became effective on July 1, 2016, and is to be used in place of the SBA's current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors, respectively, of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016.

Pursuant to the RFA, and prior to July 1, 2016, an IRFA was developed for this regulatory action using SBA's size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. Under the previously-used SBA's size standards, all of the commercial finfish and other marine fishing businesses were considered small, while 12 of the 237 shellfish businesses were determined to be large (Tables 1 and 2).

The new standard could result in a few more commercial shellfish businesses being considered small. However, taking the size standard change into consideration, NMFS has identified no additional significant alternatives that accomplish statutory objectives and minimize economic impacts of the proposed rule on small entities. Further, the new size standard does not affect the decision to prepare a FRFA as opposed to a certification for this regulatory action.

Analyses in Tables 2 and 3 below reveal that no groundfish-dependent entities exceeded the previous SBA standard of \$5.5 million in gross sales, with the mean gross sale per entity being less than \$2 million. It is therefore unlikely that any finfish, or more specifically, groundfish-dependent vessels, would be considered a large business under the new NMFS size standard.

Amendment 18 regulates commercial fish harvesting entities engaged in the NE multispecies limited access fishery. A description of the specific entities that are likely to be impacted is included below for informational purposes, followed by a discussion of those regulated entities likely to be impacted by the proposed regulations. For the purposes of the RFA analysis, the ownership entities, not the individual vessels, are considered the regulated entities.

Individually-permitted vessels may hold permits for several fisheries, harvesting species of fish that are regulated by several different FMPs, even beyond those affected by Amendment 18. Furthermore, multiple permitted vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For this analysis, ownership entities are defined by those entities with common ownership personnel as listed on permit application documentation. Only permits with identical ownership personnel are categorized as an ownership entity. For example, if five permits have the same seven personnel listed as co-owners on their application paperwork, those seven personnel form one ownership entity, covering those five permits. If one or several of the seven owners also own additional vessels, with sub-sets of the original seven personnel or with new co-owners, those ownership arrangements are deemed to be separate ownership entities for the purpose of this analysis.

Ownership entities are identified on June 1 of each year based on the list of all permit numbers for the most recent complete calendar year that have applied for any type of NE Federal fishing permit. At the time of the Amendment 18 analyses, the ownership data set was based on calendar year 2014 permits and contained gross sales associated with those permits for calendar years 2012 through 2014.

On June 1, 2015, there were 661 commercial business entities potentially regulated by this action. Entities permitted to operate in the NE multispecies limited access fishery are described in Tables 1 and 2. As of June 1, 2015, there were 1,147 individual limited access permits. The 34 for-hire businesses included here are entities affiliated with limited access commercial groundfish permits, but derive greater than 50 percent of their gross sales from party/charter operations. All are small businesses (average gross revenues from 2012-14 are less than \$7.5 million). The remaining 75 entities had no revenue and are classified as small.

These totals may mask some diversity among the entities. Many, if not most, of these ownership entities maintain diversified harvest portfolios, obtaining gross sales from many fisheries and are not dependent on any one. However, not all are equally diversified. Those that depend most heavily on sales from harvesting species affected directly by Amendment 18 are most likely to be affected. By defining dependence as deriving greater than 50 percent of gross sales from sales of regulated species associated with a specific fishery, those ownership groups most likely to be affected by the proposed regulations can be identified. Using this threshold, 61 entities are groundfish-dependent; all of which are small under both the SBA and NMFS size standards (Table 3).

**Table 1. Entities regulated by Amendment 18.**

Type	Number	Number small
Primarily finfish	315	315
Primarily shellfish	237	225
Primarily for-hire	34	34
No Revenue	75	75
<b>Total</b>	<b>661</b>	<b>649</b>

**Table 2. Description of Regulated Entities by Gross Sales.**

Sales category	Number	Number small	Mean gross sales	Median gross sales	Mean permits per entity	Max permits per entity
<\$50K	186	186	\$10,597	\$1,954	1.3	30
\$50-100K	71	71	\$76,466	\$78,736	1.3	3
\$100-500K	225	225	\$244,672	\$219,731	1.3	4
\$500K-1mil	91	91	\$734,423	\$720,668	1.7	7
\$1-5.5mil	74	73	\$1,899,461	\$1,498,138	2.4	11
\$5.5mil+	14	3	\$11,900,790	\$7,383,522	12.4	28

**Table 3. Impacted Groundfish-Dependent Regulated Commercial Groundfish Entities by Gross Sales.**

Sales	Entities (#)	Large businesses (#)	Average fishing permits owned per entity (#)	Maximum fishing permits per entity (#)	Median gross sales per entity	Mean gross sales per entity	Median groundfish sales per entity	Mean groundfish sales per entity
<\$50K	6	0	1.0	1	\$10,116	\$20,316	\$8,831	\$16,476
\$50-100K	7	0	1.1	2	\$72,052	\$67,390	\$56,221	\$49,341
\$100-500K	22	0	1.6	4	\$226,938	\$240,833	\$116,018	\$172,331
\$500K-1mil	13	0	1.2	2	\$698,226	\$718,231	\$398,548	\$491,838
\$1-5.5mil	13	0	2.2	4	\$1,553,597	\$1,854,052	\$1,292,445	\$1,403,896
<b>Total ownership entities</b>	<b>61</b>	<b>0</b>						

*Description of Projected Reporting, Record Keeping, and Other Compliance Requirements*

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0752. This revision requires any entity that has exceeded the PSC limit to render one or more permits “unusable” so that the entity would be operating within the allocation limit. If an entity exceeds the PSC limit, the entity would be required to complete a “Permit Shelving Form” and render one or more permits unusable.

Public reporting burden for the permit shelving form is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If two entities had to complete a “Permit Shelving Form,” the burden estimate would be 1 hr and cost \$1. Currently, no entity exceeds the PSC allocation limit; the most PSC any entity holds is approximately 140 PSC, and the limit is 232.5 PSC. As a result, it is unlikely that any entity would reach this threshold, or that this action would directly affect fishing operations.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

*Description of the Steps the Agency Has Taken to Minimize Significant Economic Impact on Small Entities consistent with the Stated Objectives of Applicable Statutes*

This FRFA is intended to analyze how small entities would be affected by the Amendment 18 management measures. This action is expected to have minimal, if any, impact on regulated small entities. The vast majority (649 out of 661) of potentially regulated entities are classified as small businesses by SBA and NMFS business size standards.

In general, the small entities regulated by this action will be unaffected. The majority of limited access groundfish permit holders possess permits and PSC in far smaller quantities than the proposed accumulation limits. However, individuals who comprise a part of, or the entirety of, these small entities could be restricted in the number of permits or the amount of PSC shares they wish to accumulate in the future, which could affect potential revenue.

The PSC limit alternative that was selected for this action provided the most flexibility of all the alternatives proposed. Vessel permit holders can continue to accumulate permits in a manner that allows them to maximize fishing opportunities within their portfolio.

Several stock-specific PSC limit alternatives considered in the Amendment were not selected because the Council determined the alternatives would have been too restrictive. For example, limiting an ownership entity to an accumulation limit equivalent to the PSC held as of the control date could have forced divestiture in the fishery and would have prevented ownership entities from growing. Similarly, establishing a specific accumulation limit for a specific groundfish stock could have reduced opportunities for entities to expand

into other fisheries and restrict operational flexibility. Additional information on these alternatives is available in section 4.1 of the Amendment.

Handgear A permit holders will be largely unaffected by the limited access handgear measures. As explained in the preamble, the Handgear A management measures approved in this action actually remove regulatory restrictions, increasing operational flexibility and fishing opportunities.

Several management measures and alternatives were considered but not selected by the Council. Other alternatives may be considered in a future framework, as explained in the preamble above. Additional information on these alternatives and justifications for the Council's decision are explained in section 4 of the Amendment.

#### **Small Entities Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office, and the guide, (i.e., bulletin), will be sent to all holders of permits for the NE multispecies fishery. The guide and this final rule will be available upon request.



## **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 17, 2017.

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Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons stated in the preamble, NMFS amends 50 CFR part 648 as follows:

### **PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.2, add a definition for “Ownership interest” in alphabetical order to read as follows:

#### **§ 648.2 Definitions.**

\* \* \* \* \*

*Ownership interest*, in the NE multispecies fishery, includes, but is not limited to holding share(s) or stock in any corporation, any partnership interest, or membership in a

limited liability company, or personal ownership, in whole or in part, of a vessel issued a limited access NE multispecies permit or confirmation of permit history (CPH), including any ownership interest in any entity or its subsidiaries or partners, no matter how far removed.

\* \* \* \* \*

3. In § 648.4, add paragraph (a)(1)(i)(N) and revise paragraph (c)(2)(i) to read as follows:

**§ 648.4 Vessel permits.**

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(N) *Accumulation limits--(1) 5-percent permit/CPH restriction.* Any person with an ownership interest in the NE multispecies fishery is not eligible to be issued a limited access NE multispecies permit or CPH for a vessel if the issuance results in the person having an ownership interest in excess of 5 percent of all limited access NE multispecies permits and CPH that are issued as of the date the permit/CPH application is received by the NMFS.

(2) *PSC limit.* Any person with an ownership interest in the NE multispecies fishery is not eligible to be issued a limited access NE multispecies permit or CPH for a vessel that results in that person's average potential sector contribution (PSC) exceeding a share of 15.5 for all the allocated stocks in aggregate, except as provided in paragraph (a)(1)(i)(N)(4) of this section.

(3) *Grandfather provision.* Paragraphs (a)(1)(i)(N)(I) and (2) of this section do not apply to a limited access NE multispecies permit or CPH if held on April 7, 2011. Any additional limited access NE multispecies permit or CPH that a person acquires after April 7, 2011, are subject to the accumulation limits specified within this section.

(4) Any person can be issued one limited access NE multispecies permit or CPH that results in that person's total PSC exceeding the PSC limit as described in this section. That person must identify to NMFS on or before March 31 of each year, vessel permits or CPH that will be rendered unusable the upcoming fishing year so that the person's total PSC for the upcoming fishing year is an amount equal to or below the PSC limit. Beginning on May 1, the permits or CPH rendered unusable may not be fished, leased, or enrolled in a sector by that person for the remainder of the fishing year, but may be transferred by that person. The transfer of a permit or CPH rendered unusable shall be made through an arm's-length transaction (for example, to an independent and unrelated entity that does not share an ownership interest with that person).

\* \* \* \* \*

(c) \* \* \*

(2) *Vessel permit information requirements.* (i) An application for a permit issued under this section, in addition to the information specified in paragraph (c)(1) of this section, also must contain at least the following information, and any other information required by the Regional Administrator: Vessel name, owner name or name of the owner's authorized representative, mailing address, and telephone number; USCG documentation number and a copy of the vessel's current USCG documentation or, for a vessel not required to be

documented under title 46 U.S.C., the vessel's state registration number and a copy of the current state registration; a copy of the vessel's current party/charter boat license (if applicable); home port and principal port of landing, length overall, GRT, NT, engine horsepower, year the vessel was built, type of construction, type of propulsion, approximate fish hold capacity, type of fishing gear used by the vessel, number of crew, number of party or charter passengers licensed to be carried (if applicable), permit category; if the owner is a corporation, a copy of the current Certificate of Incorporation or other corporate papers showing the date of incorporation and the names of the current officers of the corporation, and the names and addresses of all persons holding any ownership interest in a NE multispecies permit or CPH or shareholders owning 25 percent or more of the corporation's shares for other fishery permits; if the owner is a partnership, a copy of the current Partnership Agreement and the names and addresses of all partners; permit number of any current or, if expired, previous Federal fishery permit issued to the vessel.

\* \* \* \* \*

4. In § 648.14:
  - a. Add paragraphs (k)(2)(v) and (vi);
  - b. Revise paragraph (k)(9)(i); and
  - c. Add paragraph (k)(9)(ii)(N).

The additions and revisions read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(k) \* \* \*

(2) \* \* \*

(v) Fish for, possess, land fish, enroll in a sector, or lease a permit or confirmation of permit history (CPH) as a lessor or lessee, with a permit that has been rendered unusable as specified in § 648.4(a)(1)(i)(N).

(vi) Acquire a limited access NE multispecies permit that would result in a permit holder exceeding any of the ownership accumulation limits specified in § 648.4(a)(1)(i)(N), unless authorized under § 648.4(a)(1)(i)(N).

\* \* \* \* \*

(9) \* \* \*

(i) If operating under the provisions of a limited access NE multispecies Handgear A permit south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), fail to declare the vessel operator's intent to fish in this area via VMS or fail to obtain or retain on board a letter of authorization from the Regional Administrator, as required by § 648.82(b)(6)(iii).

\* \* \* \* \*

(ii) \* \* \*

(N) Act as a lessor or lessee of NE multispecies DAS to or from a limited access permit that has been rendered unusable as specified in § 648.4(a)(1)(i)(N).

\* \* \* \* \*

5. In § 648.82, revise paragraphs (b)(6) and (g) to read as follows:

**§ 648.82 Effort control program for NE multispecies limited access vessels.**

\* \* \* \* \*

(b) \* \* \*

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (135 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species and ocean pout, as specified under § 648.86. If either the GOM or GB cod trip limit applicable to a vessel fishing under a NE multispecies DAS permit, as specified in § 648.86(b)(1) and (2), respectively, is reduced below 300 lb (135 kg) per DAS by NMFS, the cod trip limit specified in this paragraph (b)(6) shall be adjusted to be the same as the applicable cod trip limit specified for NE multispecies DAS permits. For example, if the GOM cod trip limit for NE multispecies DAS vessels was reduced to 250 lb (113.4 kg) per DAS, then the cod trip limit for a vessel issued a Handgear A category permit that is fishing in the GOM Regulated Mesh Area would also be reduced to 250 lb (113.4 kg). Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies;

(ii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks; and

(iii) *Declaration.* For any such vessel that is not required to use VMS pursuant to § 648.10(b)(4), to fish for GB cod south of the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must obtain, and retain on board, a letter of authorization from the Regional Administrator stating an intent to fish south of the GOM Regulated Mesh Area and may not fish in any other area for a minimum of seven consecutive days from the effective date of the letter of authorization. For any such vessel that is required, or elects, to use VMS pursuant to § 648.10(b)(4), to fish for GB cod south of the GOM

Regulated Mesh Area, as defined at § 648.80(a)(1), a vessel owner or operator must declare an intent to fish south of the GOM Regulated Mesh Area on each trip through the VMS prior to leaving port, in accordance with instructions provided by the Regional Administrator. Such vessels may transit the GOM Regulated Mesh Area, as defined at § 648.80(a)(1), provided that their gear is stowed and not available for immediate use as defined in § 648.2.

\* \* \* \* \*

(g) *Spawning season restrictions.* A vessel issued a valid Small Vessel category permit specified in paragraph (b)(5) of this section, or a vessel issued an open access Handgear B permit, as specified in § 648.88(a), may not fish for, possess, or land regulated species or ocean pout from March 1 through March 20 of each year. A common pool vessel must declare out and be out of the NE multispecies DAS program, and a sector must declare that the vessel will not fish with gear capable of catching NE multispecies (i.e., gear that is not defined as exempted gear under this part), for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species, ocean pout, or non-exempt species during the period from May 12 through May 31.

\* \* \* \* \*

6. In § 648.87, revise paragraph (c)(2)(i) introductory text to read as follows:

**§ 648.87 Sector allocation.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) *Regulations that may not be exempted for sector participants.* The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: Specific times and areas within the NE multispecies year-round closure areas; permitting restrictions (*e.g.*, vessel upgrades, etc.); gear restrictions designed to minimize habitat impacts (*e.g.*, roller gear restrictions, etc.); reporting requirements; and AMs specified in § 648.90(a)(5)(i)(D). For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified in § 648.82, the SAP-specific reporting requirements specified in § 648.85, VMS requirements for Handgear A category permitted vessels as specified in § 648.10, and the reporting requirements associated with a dockside monitoring program are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. For the purpose of this paragraph (c)(2)(i), the Regional Administrator may not grant sector participants exemptions from the NE multispecies year-round closures areas defined as Essential Fish Habitat Closure Areas as defined in § 648.81(h); the Fippennies Ledge Area as defined in paragraph (c)(2)(i)(A) of this section; Closed Area I and Closed Area II, as defined in § 648.81(a) and (b), respectively, during the period February 16 through April 30; and the Western GOM Closure Area, as defined at § 648.81(e), where it overlaps with GOM Cod



Protection Closures I through III, as defined in § 648.81(f)(4). This list may be modified through a framework adjustment, as specified in § 648.90.

\* \* \* \* \*

7. In § 648.90, revise paragraphs (a)(2)(i) through (iii) to read as follows:

**§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.**

\* \* \* \* \*

(a) \* \* \*

(2) *Biennial review.* (i) At a minimum, the NE multispecies PDT shall meet on or before September 30 every other year to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. The PDT shall review available data pertaining to: Catch and landings, discards, DAS allocations, DAS use, sector operations, and other measures of fishing effort; survey results; stock status; current estimates of fishing mortality and overfishing levels; social and economic impacts; enforcement issues; and any other relevant information. The PDT may also review the performance of different user groups or fleet sectors.

(ii) Based on this review, the PDT shall recommend ACLs for the upcoming fishing year(s), as described in paragraph (a)(4) of this section, and develop options for consideration by the Council, if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or other measures necessary to rebuild overfished stocks and achieve the FMP goals and objectives, which may include a preferred option. The range of options developed

by the PDT may include any of the management measures in the FMP, including, but not limited to: ACLs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 12 regulated species and ocean pout if able to be determined; identifying and distributing ACLs and other sub-components of the ACLs among various segments of the fishery; AMs; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; describing and identifying EFH; fishing gear management measures to protect EFH; designating habitat areas of particular concern within EFH; and changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs. The PDT must demonstrate through analyses and documentation that the options it develops are expected to meet the FMP goals and objectives.

(iii) In addition, the PDT may develop ranges of options for any of the management measures in the FMP and the following conditions that may be adjusted through a framework adjustment to achieve FMP goals and objectives including, but not limited to: Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, etc.; accumulation limits due to a permit buyout or buyback; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific ACLs (including sub-ACLs for specific stocks and areas (e.g., Gulf of Maine cod)), area management boundaries, and adoption of area-specific

management measures including the delineation of inshore/offshore fishing practices, gear restrictions, declaration time periods; sector allocation requirements and specifications, including the establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation, an optional sub-ACL specific to Handgear A permitted vessels, and the calculation of PSCs; sector administration provisions, including at-sea and dockside monitoring measures; sector reporting requirements; state-operated permit bank administrative provisions; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; reporting requirements; declaration requirements pertaining to when and what time period a vessel must declare into or out of a fishery management area; the GOM Inshore Conservation and Management Stewardship Plan; adjustments to the Handgear A or B permits; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment; changes to the SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, the process for prioritizing observer sea-day allocations, reports, and/or industry-funded observers or observer set aside programs; and any other measures currently included in the FMP.

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